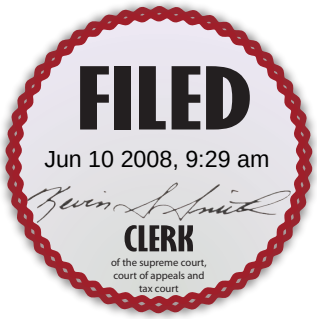

ATTORNEY FOR APPELLANT:

KIMBERLY A. JACKSON
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

BRENDA ST. JOHN	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 28A05-0712-CR-688
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0608-FA-120

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Brenda St. John appeals from her conviction and sentence for Dealing in Methamphetamine,[1] as a class A felony, Dealing in Methamphetamine,[2] as a class B felony, and Maintaining a Common Nuisance,[3] a class D felony, as well as her adjudication as a Habitual Substance Offender.[4] On appeal, St. John presents the following restated issues for review:

1. Did the trial court abuse its discretion when it denied St. John's motion for continuance of the jury trial?

2. Did the trial court properly allow the jury to use transcripts as a demonstrative aid when listening to audio recordings of the controlled buy and a subsequent phone conversation?

3. Did the trial court err in denying St. John's motion for mistrial?

4. Did the trial court properly sentence St. John?

We affirm in part, reverse in part, and remand.

During the summer of 2006, Jerry McClarey worked with the Linton Police Department as a confidential informant pursuant to a cooperation agreement that would greatly reduce a pending class A felony dealing charge from April of that year. McClarey informed Detective Joshua Goodman of the Linton Police Department that one of the people he was capable of involving in a drug investigation was St. John, whom McClarey had known for at least twenty years.

---

[1] Ind. Code Ann. § 35-48-4-1.1 (West, PREMISE through 2007 1st Regular Sess.).

[2] *Id*.

[3] I.C. § 35-48-4-13 (West 2004).

[4] Ind. Code Ann. § 35-50-2-10 (West, PREMISE through 2007 1st Regular Sess.).

Thereafter, on the morning of August 7, McClarey called and informed Goodman that he had just spoken with St. John on the phone and arranged to buy one-half gram of methamphetamine from her that afternoon for $50. McClarey further indicated that St. John had requested a pack of Marlboro cigarettes. Goodman and another officer met with McClarey outside of Linton to set up the controlled buy. They searched McClarey and the moped he was driving and installed a digital recorder in his boot. Goodman then provided McClarey with an unopened pack of Marlboro cigarettes and $100 of recorded buy money (four $20 bills and two $10 bills). Goodman instructed McClarey to attempt to purchase a full gram of methamphetamine from St. John. The officers performed surveillance on McClarey along the route to St. John's residence, and they watched the house after McClarey entered around 1:50 p.m.

An unidentified male approached McClarey outside the house and the two went inside to St. John's bedroom together. St. John was there and had a surveillance monitor on her dresser, which was turned on with a view of the driveway. McClarey greeted St. John and informed her he would "take a fuckin' gram" if she had it, as he had $100. *Transcript* at 356. St. John retrieved two half-gram packages of methamphetamine from her purse, which was beside her on the bed, and gave them to McClarey. McClarey gave St. John the $100 of buy money, as well as the cigarettes. After making small talk with the unidentified male, McClarey left the residence with the methamphetamine concealed inside an empty Marlboro pack. McClarey was in the residence for about five minutes.

McClarey met with the officers on a nearby county road immediately following the controlled buy. Goodman recovered the digital recorder and the Marlboro pack

containing two half-gram packages of crystal methamphetamine from McClarey. After searching McClarey and debriefing him, Goodman told McClarey that he would contact him later that day to make another call to St. John.

Around 9:30 that evening, Goodman and McClarey met behind the Linton School to call St. John and arrange another drug buy. This call was recorded using a digital recording device. McClarey told St. John that he had another $100 and asked if she could "help" him again, and St. John indicated, "it will be here." *Id.* at 367. Based upon this call and the earlier controlled buy, a search warrant was obtained and executed at St. John's residence a few hours later.

When police entered the home around midnight, St. John was found sitting on her bed next to her purse and within view of the surveillance monitor. Three other people, including Ryan Followell and Cynthia Wiley, were also in her bedroom. Robert Ream was found asleep in a different bedroom. St. John repeatedly told Indiana State Trooper Mark Parker that she needed to speak with him and begged the officers not to search her room because it was her birthday. When officers indicated the search would proceed, St. John admitted she had "a ball[5] somebody dropped off for [her] to sell" in her purse. *Id.* at 278. She offered to tell the police who had provided it to her if they would call off the search, which they refused.

Inside one compartment of St. John's purse, officers found four individual baggies of methamphetamine, as well as several empty baggies, twist ties, and a set of digital

---

[5] "A ball" (also referred to as an "eight ball") is a street term that refers to one-eighth of an ounce or approximately 3.2 grams of a drug.

scales. Inside an eyeglass case in another compartment of the purse, officers found a syringe loaded with methamphetamine, three individual baggies of methamphetamine, a cigarette lighter, and a Q-tip. A $20 bill from the controlled buy earlier that day was also inside the purse. The methamphetamine recovered from St. John's purse had a total weight of 7.41 grams, which is more than two eight-balls and more than what would be customarily possessed for personal use. As a result of the search, St. John was arrested.[6]

On August 9, 2006, the State charged St. John with two counts of dealing, one as a class A felony and one as a class B felony, and one count of maintaining a common nuisance, a class D felony.[7] Thereafter, the State filed its allegation that St. John was a habitual substance offender. After two continuances requested by St. John, her jury trial was scheduled for August 21, 2007. Two weeks before trial, St. John requested another continuance, which the trial court denied. St. John renewed her request for a continuance four days before trial, as well as on the day of the scheduled trial. These requests were also denied. The jury trial commenced as scheduled, and St. John was found guilty as set forth above and adjudicated a habitual substance offender. Thereafter, the trial court sentenced St. John to forty years in prison for the class A felony (Count 1), fifteen years for the class B felony (Count 2), and two years for the class D felony (Count 3). The

---

[6] Wiley, Followell, and Ream were also arrested that evening, as they were each found in possession of drugs. Wiley had a small amount of marijuana and a few prescription pills in her purse. A baggy of methamphetamine was found stuffed in the cushions of the chair in which Followell was sitting. Finally, two small, partially used amounts of methamphetamine were found in the bedroom where Ream was sleeping.

[7] St. John was also charged with possession of paraphernalia, a class A misdemeanor. This count was dismissed prior to trial.

sentence for Count 2 was ordered consecutive to Count 1 and Count 3 was ordered concurrent to Counts 1 and 2. This resulted in an aggregate sentence of fifty-five years, enhanced by five years for being a habitual substance offender. St. John now appeals her conviction and sentence. Additional facts will be provided below as needed.

1.

St. John initially argues the trial court abused its discretion by denying several motions for continuance filed shortly before trial. She asserts the motions were "prompted by the unavailability of an important witness for deposition, the State's last-minute dismissal of half of the charges that St. John faced, and the State's belated decisions regarding the evidence it would submit at trial." *Appellant's Brief* at 17-18.

The standard of review for a trial court's ruling on a non-statutory motion for continuance is an abuse of discretion. *Flake v. State*, 767 N.E.2d 1004 (Ind. Ct. App. 2002). "Continuances for additional time to prepare for trial are generally disfavored, and courts should grant such motions only where good cause is shown and such a continuance is in the interest of justice." *Jackson v. State*, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001). The trial court, in determining whether good cause exists for granting the motion, may review the circumstances of the case, as well as the allegations of the motion itself. *Poulton v. State*, 666 N.E.2d 390 (Ind. 1996). We will not disturb the trial court's decision absent a clear demonstration that the court abused its discretion. *Flake v. State*, 767 N.E.2d 1004. Further, on appeal, "the defendant must make a specific showing of how [s]he was prejudiced as a result of the trial court's denial of h[er] motion." *Harris v. State*, 659 N.E.2d 522, 527 (Ind. 1995).

St. John asserts a continuance was required due to the State's tardy submission of discovery, the State's belated decision regarding which charges to prosecute, numerous last-minute motions filed by the State, and the inability to depose Ream. These were all claims made to support one or more of her various motions to continue made thirteen days before, four days before, and on the day of the trial. St. John's appellate argument, however, focuses solely on her claim that the State failed to timely disclose evidence. Thus, we confine our discussion to that claim.[8]

In its order denying the motion to continue filed by St. John on August 17 (four days before the scheduled trial), the trial court observed that the case had been pending for more than a year and that in that time, "[t]he State has fully complied with the Court's discovery order and…has made exceptional efforts to ensure that all evidence was available to the Defendant." *Appellant's Appendix* at 121. Based on this and other findings, the trial court concluded:

> The Defendant's motion for continuance and information provided during the hearing on August 17, 2007, merely make broad and general statements that the Defendant is not able to proceed to trial on August 21, 2007, and there appears to be no good cause to continue the jury trial as scheduled.

Id. at 122.

The day before the scheduled trial, the State provided St. John with updated transcripts of the drug buy and phone conversation. The State intended to use these short

---

[8] We note that the record reveals St. John did depose Ream prior to trial. Further, the only charge the State dismissed *with regard to this cause* was the class A misdemeanor possession of paraphernalia count. We fail to see how the dismissal of this minor charge would have affected St. John's defense. Moreover, St. John does not explain how the dismissal of a separate, unrelated, controlled-substance case negatively impacted her ability to proceed to trial in the instant case.

transcripts as demonstrative aids at trial. The transcripts that had previously been provided to the defense were based upon an enhanced recording, while the new transcripts were based upon the original recording, which the State determined was easier to hear. It is not clear to what extent these transcripts differed.[9] It is evident, however, that the defense had been provided with the original and enhanced recordings many months earlier.

St. John argues the State's belated decision to use the original recording and its tardy submission of the updated transcript the day before trial "left [her] scrambling to review this critical evidence and use it to prepare for trial." *Appellant's Brief* at 2. She claims that trial court abused its discretion by denying her request for a continuance on the day of her jury trial.

The transcripts of which St. John complains contain less than six pages of dialogue. Further, St. John already had copies of the original recording upon which the transcripts were based, and the transcripts were not intended as evidence but, rather, were to be used at trial only as demonstrative aids. Under the circumstances of this case, we simply cannot agree with St. John's assertion that she was compelled to maneuver in a factual vacuum. The trial court did not abuse its discretion in denying her various last-minute requests for a continuance of the trial that had been more than a year in the making and had already been continued twice upon St. John's motion.

2.

[9] In fact, St. John complained to the trial court about both transcripts arguing that her voice could not be heard on either version (original or enhanced) of the recording of the controlled buy.

The next issue presented by St. John also involves the transcript of the controlled drug buy. She contends the jury should not have been allowed to view the transcript because it was inconsistent with the actual recording and never admitted into evidence.

The State did not introduce the transcript into evidence at trial. The State, however, was allowed to distribute the transcript to the jury as an aid while the jury listened to the audio recording of the controlled buy. Immediately before the recording was played for the jury, the trial court gave the following limiting instruction to the jury:

> Members of the Jury, you have been provided with a copy of a transcript of an audio recording and you will be listening to the recording. You are to listen to the recording as evidence and you are to use the transcripts only as assistance. Differences in meaning may be caused by such factors as the inflection in a speakers [sic] voice or inaccuracies in the transcripts. If there are any differences between the audio recording and the transcripts you should rely on what you hear rather than what you read.

Transcript at 399-400. Later, during deliberations, the jury asked to hear the recording. The jury was brought into the courtroom and, once again, provided with the limiting instruction and then allowed to view the transcript while listening to the recording.

St. John complains that the transcript contains comments that are not audible on the recording. Without explicitly setting forth the comments that have been allegedly added, St. John asserts, "to the extent that the transcript of the first recording contains references to inaudible comments allegedly made by St. John, it is an *addition* to State's Exhibit 4A and not an accurate 'transcript' of that exhibit."[10] *Appellant's Brief* at 28-29 (emphasis in original). St. John further argues that by incorporating into the transcript

[10] Our review of the transcript reveals only one comment attributed to St. John: "Ok, right here." *Appellant's Appendix* at 226. The rest of the conversation is between McClarey and the unidentified male.

comments that were not audible on the recording, the State essentially offered substantive evidence under the guise of aiding the jury.

Our Supreme Court has adopted the following standards for use of transcripts of tape recordings in situations like the one before us:

> "The best evidence of the conversation is the tape itself; the transcript should normally be used only after the defendant has had an opportunity to verify its accuracy and then only to assist the jury as it listens to the tape. If accuracy remains an issue, a foundation may first be laid by having the person who prepared the transcripts testify he has listened to the recordings and accurately transcribed their contents. Because the need for transcripts is generally caused by two circumstances, inaudibility of portions of the tape under the circumstances under which it will be replayed or the need to identify the speakers, it may be appropriate, in the sound discretion of the trial judge, to furnish the jurors with copies of a transcript to assist them in listening to the tapes. In the ordinary case this will not be prejudicially cumulative. Transcripts should ordinarily not be read to the jury or given independent weight. The trial judge should carefully instruct the jury that differences in meaning may be caused by such factors as the inflection in a speaker's voice or inaccuracies in the transcript and that they should, therefore, rely on what they hear rather than on what they read when there is a difference. Transcripts should ordinarily not be admitted into evidence unless both sides stipulate to their accuracy and agree to their use as evidence."

Bryan v. State, 450 N.E.2d 53, 59 (Ind. 1983) (quoting *United States v. McMillan*, 508 F.2d 101, 105 (8th Cir. 1974)) (internal citations omitted).

In the instant case, the trial court fully complied with the directives provided by our Supreme Court in *Bryan*. The transcript was not admitted into evidence but was used purely as a demonstrative aid. To the extent the one comment attributed to St. John was inaccurate or not audible on the recording, members of the jury were properly instructed to rely on what they heard on the recording rather than what they read in the transcript. We presume the jury follows the instructions it is given. *Tormoehlen v. State*, 848

N.E.2d 326 (Ind. Ct. App. 2006), *trans. denied*. Moreover, while St. John initially objected to the use of the transcript at trial, she ultimately agreed that the transcript could be used as long as the court gave the appropriate limiting instruction. The trial court informed St. John of the limiting instruction that would be given, and St. John responded that the limiting instruction was appropriate and would "cover" her previous objection. *Transcript* at 392. The trial court did not err in allowing the jury to use the transcript as a demonstrative aid while listening at trial to the audio recording of the buy.

St. John argues that even if use of the transcript during the trial was appropriate, no authority exists for submitting the transcript, which was never admitted into evidence, to the jury during deliberations. We observe that the transcript was not sent into the jury room as an exhibit.[11] Rather, it was simply used as a demonstrative aid while the recording of the controlled buy was played for the jury in the courtroom in response to the jury's request during deliberations to hear the recording again. Once again, the trial court instructed the jury on the proper use of the transcript. To accept St. John's argument that the jurors likely used the transcripts as substantive evidence, one must assume that the jurors ignored the court's limiting instruction. This is not an assumption we will make on appeal. *See Tormoehlen v. State*, 848 N.E.2d 326. St. John has not established error in the limited manner in which the transcript was used during deliberations.

3.

[11] St. John directs us to several cases addressing the propriety of permitting the jury to take certain exhibits into the jury room. *See, e.g., Thacker v. State*, 709 N.E.2d 3 (Ind. 1999). These cases are inapposite here.

St. John challenges the denial of her motion for mistrial made during the State's cross-examination of her at trial. In this regard, St. John contends evidence of her criminal history (including prior convictions for dealing methamphetamine) was improperly admitted and highly prejudicial.

To be sure, on cross-examination, the State elicited detailed information from St. John about her prior criminal history. This was done without an objection from St. John and only after St. John had already acknowledged much of her criminal history during direct examination, including a dealing conviction in 1988 (actually 1991), possession charges in 2003, and a probation violation in 2005. It cannot be reasonably disputed that St. John opened the door to inquiries into her criminal history. *See Moffitt v. State*, 817 N.E.2d 239, 253 (Ind. Ct. App. 2004) ("a defendant may open the door to questions otherwise not admissible under the rules of evidence" and "a defendant who, through direct testimony, leaves the trier of fact with a false or incomplete impression of his criminal record may open the door to inquiries into his complete criminal history"), *trans. denied*. Moreover, even assuming St. John had not opened the door to such evidence, her mistrial claim is waived.

At trial, St. John moved for a mistrial based only on her incorrect belief that the prosecutor had stated St. John was currently out on bond on two separate cases. The State was asking St. John a series of questions about her arrests and charges in 2003, and after asking questions about her being arrested in March 2003, released on bond, arrested again in May, and released on bond again on May 17, 2003, the State then said, "So you were, you were out on bond now on two, on two cases on May 17th 2003." *Transcript* at

624. It was based on that statement that St. John moved for a mistrial, arguing that the State indicated "out on bond now" when there were no other pending cases. *Id*. at 631. The trial court correctly denied the motion for mistrial because it was clear from the State's line of questioning that the "now" was referring to the time period being discussed (2003), not the present time.[12]

On appeal, St. John asserts an entirely new basis for mistrial. It is well established, however, that a defendant may not argue one ground for objection at trial and then raise new grounds on appeal. *Gill v. State*, 730 N.E.2d 709 (Ind. 2000). Because St. John did not request a mistrial or otherwise object to the admission of evidence related to her prior criminal history, she has waived this claim of error for appellate review. *See id*.

As an apparent afterthought, St. John asserts a claim of fundamental error in an attempt to avoid waiver. Our Supreme Court has made clear that the fundamental error doctrine has "extremely narrow applicability". *Carter v. State*, 754 N.E.2d 877, 881 (Ind. 2001). A fundamental error is a substantial, blatant violation of basic principles of due process rendering the trial unfair to the defendant and applies only when the error is so prejudicial to the rights of a defendant as to make a fair trial impossible. *Carter v. State*, 754 N.E.2d 877. "An appellate court receiving contentions of fundamental error need only expound upon those it thinks warrant relief. It is otherwise adequate to note that the claim has not been preserved." *Id*. at 881.

St. John's entire fundamental-error argument follows:

---

[12] Despite the plain meaning of the State's reference, St. John was allowed to clarify on redirect that she was currently not on bond in any other case and had no other pending cases in any county.

> The introduction of St. John's full criminal history, including highly prejudicial drug offenses, was so prejudicial as to render a fair trial impossible. The jury could not objectively review the evidence after learning of St. John's history of dealing methamphetamine and her other repeated encounters with law enforcement.

Appellant's Brief at 41. We find that this claim does not warrant exception to the general rule requiring preservation of error, especially considering the fact that on direct examination St. John herself acknowledged a long drug history, including several arrests and a prior conviction for dealing methamphetamine. *See Carter v. State*, 754 N.E.2d 877.

We agree with the State that the record reveals St. John made a calculated decision to testify and admit to her past history with drugs in order to make her case to the jury that she was just a poor addict who had been set up by McClarey. St. John was clearly advised that this strategy would likely result in the jury learning prejudicial information of her criminal past. The mere fact that her gamble proved unsuccessful does not mean that St. John should be given a second bite at the apple in which to pursue a different strategy.

4.

Finally, St. John challenges her sentence. She claims the trial court abused its discretion in its determination of aggravating and mitigating circumstances. She further argues that her sixty-year sentence is inappropriate in light of the nature of the offense and her character. She asks that we revise her sentence and impose concurrent advisory sentences, enhanced by five years due to the habitual substance offender finding, for a total sentence of thirty-five years. We will address each of her arguments in turn.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v.* State, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Under the new sentencing scheme, a court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id*. Thus, in *Anglemyer*, our Supreme Court held:

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors.

Anglemyer v. State, 868 N.E.2d at 491. Therefore, "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id*. Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482.

In aggravation, the trial court discussed St. John's criminal history, her past probation violations, the "great risk" she would reoffend, and her history of drug-related antisocial behavior for which she had not been convicted. *Appellant's Appendix* at 12.

While the court found no mitigators, the trial court indicated that the hardships in St. John's life lessened the aggravating circumstances a little.[13]

St. John initially argues that the trial court erred in finding her criminal history to be an aggravating circumstance. Specifically, she claims the trial court erroneously considered as part of her criminal history one of the convictions that formed the basis for the habitual substance offender finding. Our Supreme Court, however, has just held that under our revised sentencing statutes, "when a trial court uses the same criminal history as an aggravator and as support for a habitual offender finding, it does not constitute impermissible double enhancement of the offender's sentence." *Pedraza v. State*, No. 49S04-0711-CR-516, slip op. at 5 (May 22, 2008). Therefore, *Pedraza* disposes of St. John's claim in this regard.

We further observe that in addition to the two prior convictions used to support the habitual substance offender adjudication (class B felony dealing in 1991 and class D felony possession of methamphetamine in 2003), St. John has two other felony convictions related to controlled substances from 1991 (another class B felony dealing conviction and a class D felony conviction for maintaining a common nuisance). Moreover, the record reveals that St. John's probation was revoked in 2004 and again in 2005 for drug use and failure to comply with treatment following her conviction for

---

[13] The trial court stated in this regard:

> [Y]ou have had unfortunately a lot of trauma, sadness and unfortunate circumstances that came about in your life. Unfortunately there is a central theme in all of them, almost all of them it is using or selling methamphetamine. Relying on the, let me get to that, I do think the hardships in your life lessen the aggravating circumstances a little bit even though I do not find that they are actually mitigating circumstances."

Transcript at 801-02.

possession of methamphetamine in 2003. The trial court did not abuse its discretion in finding St. John's history of drug-related convictions and probation violations to constitute a significant aggravating circumstance.

St. John also challenges the trial court's reliance on her history of arrests and charges that were never reduced to convictions. St. John correctly observes that arrests and charges do not constitute evidence of criminal history. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). Nevertheless, it is clear that a record of arrests and charges may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. *Id*. Thus, such information may be relevant to the assessment of the defendant's character in terms of the risk that he will commit another crime. *Id*. This is precisely the manner in which the trial court considered St. John's extensive history of arrests and charges not reduced to conviction.[14] Therefore, we find no error.

Finally, with regard to aggravating circumstances, St. John contends the trial court erroneously found that she was at a great risk to reoffend. She claims that she only has three prior convictions from 1991 and 2003 and that she has finally dealt with her addiction after being arrested on the present charges. We find no merit to this argument.

---

[14] St. John had eight charges filed in 2003, under four separate causes, that were dismissed pursuant to a negotiated plea agreement. These included two counts of possession of methamphetamine, two counts of possession of marijuana, possession of a controlled substance, conversion, maintaining a common nuisance, and possession of paraphernalia. Contrary to St. John's assertion on appeal, *Farmer v. State*, 772 N.E.2d 1025 (Ind. Ct. App. 2002) does not foreclose consideration of these dismissed charges. Rather, *Farmer* simply stands for the proposition that charges dismissed as part of a plea agreement in the case at hand cannot be considered in aggravation, as such would deny the defendant the full benefit of his plea agreement. It is quite different to say that the dismissed charges cannot be considered in a subsequent case for what they say about the defendant's character and likelihood to reoffend.

With respect to mitigating circumstances, St. John asserts the trial court should have found her health (that is, she was in a serious motorcycle accident and on life support *in 1986*) and tragic life as mitigating. St. John, however, provides no authority in support of these mitigating circumstances. Thus, these issues are waived. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) ("party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record"), *trans. denied*; *see also* Ind. Appellate Rule 46(A)(8) (requiring contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal). Waiver notwithstanding, we find no abuse of discretion in the trial court's refusal to find mitigating circumstances in this case.

Having found no abuse of discretion, we now address the appropriateness of St. John's sentence. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, "we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

The trial court did not find the nature and the circumstances of the crimes at hand to be particularly aggravating, nor do we. St. John's character as reflected in the discussion above, however, is aggravating. St. John has been involved with illegal drugs for nearly twenty years. She has an extensive history of arrests, convictions, and probation violations, particularly in the three years leading up to the instant offenses. She has been undeterred by her significant contacts with law enforcement, and the likelihood of her reoffending is clearly high.

We conclude that St. John's poor character justifies sentences in excess of the advisory sentences for each of her convictions. We do not believe, however, that consecutive sentences resulting in an aggregate sentence of sixty years in prison were appropriate. Here, both dealing counts involved the same confidential informant, occurred at the same location, and were committed within hours of each other. On remand, we direct the trial court to impose concurrent sentences for the dealing convictions for an aggregate sentence of forty-five years in prison.

Judgment affirmed in part, reversed in part, and remanded.

KIRSCH, J., and BAILEY, J., concur.